

FILED

FEB 28 2008

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIAUNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:

RANDALL F. CHAMBERS and
CINDY L. CHAMBERS

Debtors.

Case No. 07-30041-B-11

D.C. No. N/A.

MEMORANDUM DECISION

The court has reviewed the debtors' ex parte Notice of Request to Excuse Co-Debtor from Court Appearances (the "Ex Parte Request") filed on February 26, 2008. (Dkt. 44).

The debtors seek an order excusing joint debtor Cindy L. Chambers from "future court appearances and deliberations that solicit information regarding business operations, and all other matters regard this Chapter 11 bankruptcy petition." (Dkt. 44 at 1). The debtors allege that on November 12, 2005 Cindy Chambers was injured in an automobile accident in Shasta County California. The debtors allege that the portion of Mrs. Chambers' brain the processes anxiety and stress is still injured such that if she were subjected to a "anxiety and stress, as what typically occurs when laypersons are subjected to the courtroom environment," Mrs. Chambers may have "an esophageal spasm episode that requires immediate medication to suppress." (Dkt. 44 at 2).

1 The debtors allege that Mr. Chambers has "100% of all knowledge
2 of the business operations that the court wishes to inquire of"
3 and that the United States trustee has excused Mrs. Chambers from
4 appearing at meetings with the United States trustee. (Dkt. 44
5 at 2).

6 The Ex Parte Request will be denied due to procedural
7 defects and, alternatively, on its merits. The debtors failed to
8 give notice of the Ex Parte Request to all creditors in this
9 case. The debtors' proof of service indicates that they served
10 the United States trustee, the bankruptcy court clerk, and three
11 creditors with the motion. Because the Ex Parte Request seeks
12 relief that affects all creditors, the debtors must give notice
13 to all creditors. See Fed. R. Bankr. P. 9014(a). The debtors
14 also did not assign a docket control number to the Ex Parte
15 Request, as they are required to do by Local Bankruptcy Rule
16 9014-1(c). Failure to comply with the Local Bankruptcy Rules
17 applicable to motion practice is grounds for denial of the
18 motion. LBR 9014-1(1).

19 As to the merits of the Ex Parte Request, the debtors have
20 failed to present medical evidence that substantiates their
21 claims regarding Mrs. Chambers' health. They have also made no
22 showing as to any specific appearance that would cause Mrs.
23 Chambers to experience the problems they describe, other than
24 their general argument that they feel that court appearances in
25 general create stress and anxiety for lay persons. Local
26 Bankruptcy Rule 9014-1(d)(6) requires that every motion be
27 accompanied by evidence establishing its factual allegations and
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1 demonstrating that the movant is entitled to the relief
2 requested. They have also failed to cite authority supporting
3 the Ex Parte Request that shows that they are entitled to the
4 relief that they seek. Local Bankruptcy Rule 9014-1(d)(5)
5 requires the each motion, opposition, and reply shall cite the
6 legal authority relied upon by the filing party. As noted above,
7 failure to comply with the Local Bankruptcy Rules applicable to
8 motion practice is grounds for denial of the motion. LBR 9014-
9 1(1).

10 Finally, the court notes that this is a joint chapter 11
11 case commenced under 11 U.S.C. § 302. The purpose of a joint
12 petition is administrative convenience. The debtors could also
13 have filed two separate individual cases. "A joint case creates
14 two separate estates, however, and 'the court shall determine the
15 extent, if any, to which the debtors' estates shall be
16 consolidated in a joint case. 11 U.S.C. § 302(b). Thus, in the
17 absence of such an order, a joint case - just as separate cases -
18 consists of a separate estate for each spouse." In re Ageton, 14
19 B.R. 822 (9th Cir. BAP 1981). As a result, Mrs. Chambers remains
20 as the debtor in possession of the individual bankruptcy estate
21 that was created by virtue of the filing of the petition that
22 listed her as one joint debtor. In the absence of evidence
23 supporting the Ex Parte Request or legal authority supporting the
24 Ex Parte Request, the court declines to excuse Mrs. Chambers from
25 future court appearances that may require her to appear in proper
26 prosecution of the administration of the bankruptcy estate.

1 The court will issue an order consistent with the foregoing
2 decision.

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4 Dated: FEB 27 2008

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7 Thomas C. Holman
8 United States Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

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U.S. Department of Justice
Office of the U.S. Trustee
501 I St #7-500
Sacramento, CA 95814

DATED: 2/29/2008

By: _____


Deputy Clerk

EDC 3-070 (New 4/21/00)